

IN THE CIRCUIT COURT, FOURTH
JUDICIAL CIRCUIT, IN AND FOR
DUVAL COUNTY, FLORIDA

Case No.: 16-2008-CA-003856
Division: CV-G

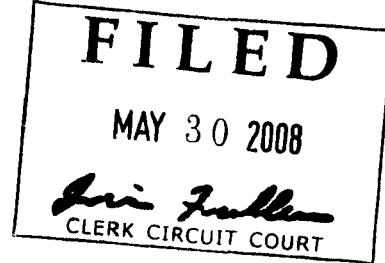
JULIE SAIEG, as Personal Representative
of the Estate of Brittany Hampton, deceased

Plaintiff,
vs.

BOYS HOME ASSOCIATION, INC., a Florida
Corporation, and FAMILY SUPPORT SERVICES
OF NORTH FLORIDA, INC., a Florida
Corporation

Defendants.

FILED
IN COMPUTER
LUZ H.V.



**BOYS HOME ASSOCIATION'S MEMORANDUM OF LAW
IN SUPPORT OF MOTION TO DISMISS**

I. INTRODUCTION

The Plaintiff, Julie Saieg as Personal Representative of the Estate of Brittany Hampton, brought this action Pursuant to Florida Statutes 768.16-768.27, the Florida Wrongful Death Act. The Plaintiff alleges negligence on the part of Boys Home Association, Inc. related to the certification of a foster parent. Specifically, the Plaintiff alleges that under Florida Statute 409.175 and Administrative Code 65C-F.A.C., Boys Home Association, Inc. had a duty to coordinate and provide thorough and complete foster parent training, and that Boys Home Association, Inc. breached this duty by negligently failing to train and provide proper monitoring and oversight to the foster care parent, thus resulting in the death of Brittany Hampton.

The deceased, Brittany Hampton, was a three year old child who was placed by the co-defendant, Florida support Services of North Florida, Inc., in a foster care home operated by

Quina Holmes. On November 17, 2007 Quina Holmes placed Brittany and her 2 year old sibling in a bathtub of water and then left the room. When Ms. Holmes returned, she found that Brittany was unresponsive. The child died and the Duval County Medical Examiner determined that Brittany's cause of death was drowning.

II. ARGUMENT

While the Plaintiff's case is grounded upon the allegation that Boys Home Association, Inc. breached its duty to the deceased by negligently or not properly training the foster parent, there is no case or statutory law to support this claim. Florida Statute 409.175 indicates that it is the duty of the licensing agency to perform inspections and provide for training. In the instant case, Boys Home Association, Inc. does not actually license a foster care home, but simply recommends that someone is appropriate for licensing from the licensing agency. The provisions of the statute place the licensing duty on the organization that actually issued the license, which in this case would not be Boys Home Association, Inc.

The Plaintiff further alleges that Boys Home Association, Inc. breached its duty by failing to require Ms. Holmes to complete all requirements of the Model Approach to Partnership in Parenting (MAPP) foster care training program and by failing to provide foster care orientation classes. To the contrary, Ms. Holmes was provided and completed all of the training required by statute 409.175 and the (MAPP) program. MAPP is a state mandated pre- service training, which consists of 30 hours of instruction. Florida Statute 409.175 mandates only 21 hours of pre service training versus the 30 hours of training received by Ms. Holmes from Boys Home Association, Inc. It is noted that Ms. Holmes graduated from MAPP training on December 2, 2006. Subsequently, a certificate of license was issued to her by the State of Florida Department of Children and Families on April 27, 2007. Brittany Hampton was later

placed by Department of Children and Families in the care of Ms. Holmes in November 2007. The Complaint does not allege any of these facts and, significantly, does not even allege the relationship of Boys Home Association, Inc. to the foster parent, Ms. Holmes, at the time of the child's drowning.

The plaintiff alleges that Boys Home Association, Inc. did not ensure that Ms. Holmes received appropriate foster care training, including water safety and cardiopulmonary resuscitation (CPR). However, neither of these requirements is contained in the statutory language of Florida Statute 409.175. Boys Home Association, Inc. was not obligated to provide for training which is more extensive than the curriculum required or authorized by statute. The Plaintiffs allegation that the training was either insufficient or lacking is clearly a matter of policy making discretion, for which the State and Boys Home Association, Inc. are immune, unless Boys Home Association, Inc. deviated from those policies actually in place.

III. CONCLUSION

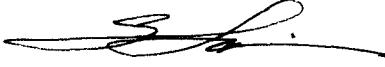
Boys Home Association, Inc. at all times complied with or exceeded the requirements of Florida Statutes 409.175 and all applicable Florida Administrative Codes. As such, Boys Home Association, Inc. did not negligently breach any duty owed and was not the direct or proximate cause of the drowning of Brittany Hampton. The Complaint fails to sufficiently allege anything that shows the existence of a duty or breach of any duty that can be considered to have been the proximate cause of drowning.



Sammy Lanier
Attorney for Defendant
Boys Home Association, Inc.
Florida Bar No. 0311871
Lanier Davidson LLC
26 Sanchez Avenue
St. Augustine, FL 32084
Telephone: (904) 808-1234
Fax: (904) 808-1232

Certificate of Service

I hereby certify that on May ²⁹ ~~26~~, 2008, a true and correct copy of the foregoing was served by U.S. mail on Hugh Cotney, Esq., at the address of 233 East Bay Street, Suite 905, Jacksonville, FL 32202, Helen Spohr, Esq., at the address of 701 West Adams Street, Suite 2, Jacksonville, FL 32204, and Maritza Pena, Esq., Joel Adler, Esq. at the address of 4000 Ponce DeLeon Blvd. Suite 570, Coral Gables, FL 33146.



Sammy Lanier
Attorney for Defendant



State of Florida
Department of Children and Families



Capacity - 02

Certificate No. 04-07-115-02

Certificate of License

Know All Men by These Presents: That the Department of Children and Families being satisfied that the home of **Qiana Holmes, 1699 Jayhawk Lane** in the city of **Jacksonville**, County of **Duval**, State of Florida, has complied with the minimum standards set by the Department for a foster home/**Boys Home Association** and the Department approves the application of said **Qiana Holmes** for a license to operate and directs the issuance of this certificate on the **27th day of April, 2007**.

This license shall continue in force for one year from the above date unless renewed, withdrawn, or revoked for cause.

This license authorizes you to care for 02 child(ren).
FEMALES ONLY

Nancy Driscoll *Nancy Driscoll*
District Administrator *by Diane Deproff*

State of Florida – District 4



BOYS' HOME
ASSOCIATION
FAMILY SERVICES

Certifies that

Ziana Holmes

Has satisfactorily completed the
Model Approach to Partnership in Parenting (MAPP) Training

December 2, 2006

Rob Brown, President/CEO
Boys' Home Association Family Services

Jim Adams, Executive Director
Family Support Services of North Florida

Jeb Bush, Governor

Rob Brown

Rob Brown, President/CEO

Billie Harbison
Billie Harbison, VP Recruitment/Training

West's F.S.A. § 409.175

West's Floridastatutes Annotated Currentness

Title XXX. Social Welfare (Chapters 409-434)

■ Chapter 409. Social and Economic Assistance (Refs & Annos)

►409.175. **Licensure of family foster homes, residential child-caring agencies, and child-placing agencies; public records exemption**

(1)(a) The purpose of this section is to protect the health, safety, and well-being of all children in the state who are cared for by family foster homes, residential child-caring agencies, and child-placing agencies by providing for the establishment of licensing requirements for such homes and agencies and providing procedures to determine adherence to these requirements.

(b) Nothing in this section gives any governmental agency jurisdiction or authority to regulate, control, or supervise the form, manner, or content of any religious curriculum or teachings of a family foster home or of a child-caring or child-placing agency, provided the health, safety, or well-being of the child is not adversely affected.

(2) As used in this section, the term:

(a) "Agency" means a residential child-caring agency or a child-placing agency.

(b) "Boarding school" means a school which is accredited by the Florida Council of Independent Schools or the Southern Association of Colleges and Schools; which is accredited by the Council on Accreditation, the Commission on Accreditation of Rehabilitation Facilities, or the Coalition for Residential Education; and which is registered with the Department of Education as a school. Its program must follow established school schedules, with holiday breaks and summer recesses in accordance with other public and private school programs. The children in residence must customarily return to their family homes or legal guardians during school breaks and must not be in residence year-round, except that this provision does not apply to foreign students. The parents of these children retain custody and planning and financial responsibility. A boarding school currently in existence and a boarding school opening and seeking accreditation have 3 years to comply with the requirements of this paragraph. A boarding school must provide proof of accreditation or documentation of the accreditation process upon request. A boarding school that cannot produce the required documentation or that has not registered with the Department of Education shall be considered to be providing residential group care without a license. The department may impose administrative sanctions or seek civil remedies as provided under paragraph (11)(a).

(c) "Child" means any unmarried person under the age of 18 years.

(d) "Child-placing agency" means any person, corporation, or agency, public or private, other than the parent or legal guardian of the child or an intermediary acting pursuant to chapter 63, that receives a child for placement and places or arranges for the placement of a child in a family foster home, residential child-caring agency, or adoptive home.

(e) "Family foster home" means a private residence in which children who are unattended by a parent or legal guardian are provided 24-hour care. Such homes include emergency shelter family homes and specialized foster homes for children with special needs. A person who cares for a child of a friend for a period not to exceed 90 days, a relative who cares for a child and does not receive reimbursement for such care from the state or federal government, or an adoptive home which has been approved by the department or by a licensed child-placing agency for children placed for adoption is not considered a family foster home.

(f) "License" means "license" as defined in s. 120.52(9). A license under this section is issued to a family foster home or other facility and is not a professional license of any individual. Receipt of a

license under this section shall not create a property right in the recipient. A license under this act is a public trust and a privilege, and is not an entitlement. This privilege must guide the finder of fact or trier of law at any administrative proceeding or court action initiated by the department.

(g) "Operator" means any onsite person ultimately responsible for the overall operation of a child-placing agency, family foster home, or residential child-caring agency, whether or not she or he is the owner or administrator of such an agency or home.

(h) "Owner" means the person who is licensed to operate the child-placing agency, family foster home, or residential child-caring agency.

(i) "Personnel" means all owners, operators, employees, and volunteers working in a child-placing agency, family foster home, or residential child-caring agency who may be employed by or do volunteer work for a person, corporation, or agency which holds a license as a child-placing agency or a residential child-caring agency, but the term does not include those who do not work on the premises where child care is furnished and either have no direct contact with a child or have no contact with a child outside of the presence of the child's parent or guardian. For purposes of screening, the term shall include any member, over the age of 12 years, of the family of the owner or operator or any person other than a client, over the age of 12 years, residing with the owner or operator if the agency or family foster home is located in or adjacent to the home of the owner or operator or if the family member of, or person residing with, the owner or operator has any direct contact with the children. Members of the family of the owner or operator, or persons residing with the owner or operator, who are between the ages of 12 years and 18 years shall not be required to be fingerprinted, but shall be screened for delinquency records. For purposes of screening, the term "personnel" shall also include owners, operators, employees, and volunteers working in summer day camps, or summer 24-hour camps providing care for children. A volunteer who assists on an intermittent basis for less than 40 hours per month shall not be included in the term "personnel" for the purposes of screening, provided that the volunteer is under direct and constant supervision by persons who meet the personnel requirements of this section.

(j) "Residential child-caring agency" means any person, corporation, or agency, public or private, other than the child's parent or legal guardian, that provides staffed 24-hour care for children in facilities maintained for that purpose, regardless of whether operated for profit or whether a fee is charged. Such residential child-caring agencies include, but are not limited to, maternity homes, runaway shelters, group homes that are administered by an agency, emergency shelters that are not in private residences, and wilderness camps. Residential child-caring agencies do not include hospitals, boarding schools, summer or recreation camps, nursing homes, or facilities operated by a governmental agency for the training, treatment, or secure care of delinquent youth, or facilities licensed under s. 393.067 or s. 394.875 or chapter 397.

(k) "Screening" means the act of assessing the background of personnel and includes, but is not limited to, employment history checks as provided in chapter 435, using the level 2 standards for screening set forth in that chapter. Screening for employees and volunteers in summer day camps and summer 24-hour camps and screening for all volunteers included under the definition of "personnel" shall be conducted as provided in chapter 435, using the level 1 standards set forth in that chapter.

(l) "Summer day camp" means recreational, educational, and other enrichment programs operated during summer vacations for children who are 5 years of age on or before September 1 and older.

(m) "Summer 24-hour camp" means recreational, educational, and other enrichment programs operated on a 24-hour basis during summer vacation for children who are 5 years of age on or before September 1 and older, that are not exclusively educational.

(3)(a) The total number of children placed in each family foster home shall be based on the recommendation of the department, or the community-based care lead agency where one is providing foster care and related services, based on the needs of each child in care, the ability of the foster family to meet the individual needs of each child, including any adoptive or biological children living in

the home, the amount of safe physical plant space, the ratio of active and appropriate adult supervision, and the background, experience, and skill of the family foster parents.

(b) If the total number of children in a family foster home will exceed five, including the family's own children, an assessment of each child to be placed in the home must be completed by a family services counselor and approved in writing by the counselor's supervisor prior to placement of any additional children in the home, except that, if the placement involves a child whose sibling is already in the home or a child who has been in placement in the home previously, the assessment must be completed within 72 hours after placement. The assessment must assess and document the mental, physical, and psychosocial needs of the child and recommend the maximum number of children in a family foster home that will allow the child's needs to be met.

(c) For any licensed family foster home, the appropriateness of the number of children in the home must be reassessed annually as part of the relicensure process. For a home with more than five children, if it is determined by the licensure study at the time of relicensure that the total number of children in the home is appropriate and that there have been no substantive licensure violations and no indications of child maltreatment or child-on-child sexual abuse within the past 12 months, the relicensure of the home shall not be denied based on the total number of children in the home.

(4)(a) A person, family foster home, or residential child-caring agency shall not receive a child for continuing full-time care or custody unless such person, home, or agency has first procured a license from the department to provide such care. This requirement does not apply to a person who is a relative of the child by blood, marriage, or adoption or to a legal guardian, a person who has received the child from the department, a licensed child-placing agency, or an intermediary for the purposes of adoption pursuant to chapter 63.

(b) A person or agency, other than a parent or legal guardian of the child or an intermediary as defined in s. 63.032, shall not place or arrange for the placement of a child in a family foster home, residential child-caring agency, or adoptive home unless such person or agency has first procured a license from the department to do so.

(c) A state, county, city, or political subdivision shall not operate a residential group care agency, or receive children for placement in residential group care facilities, family foster homes, or adoptive homes without a license issued pursuant to this section.

(d) This license requirement does not apply to boarding schools, recreation and summer camps, nursing homes, hospitals, or to persons who care for children of friends or neighbors in their homes for periods not to exceed 90 days or to persons who have received a child for adoption from a licensed child-placing agency.

(e) The department or licensed child-placing agency may place a 16-year-old child or 17-year-old child in her or his own unlicensed residence, or in the unlicensed residence of an adult who has no supervisory responsibility for the child, provided the department or licensed child-placing agency retains supervisory responsibility for the child.

(5)(a) The department shall adopt and amend licensing rules for family foster homes, residential child-caring agencies, and child-placing agencies. The department may also adopt rules relating to the screening requirements for summer day camps and summer 24-hour camps. The requirements for licensure and operation of family foster homes, residential child-caring agencies, and child-placing agencies shall include:

1. The operation, conduct, and maintenance of these homes and agencies and the responsibility which they assume for children served and the evidence of need for that service.
2. The provision of food, clothing, educational opportunities, services, equipment, and individual supplies to assure the healthy physical, emotional, and mental development of the children served.
3. The appropriateness, safety, cleanliness, and general adequacy of the premises, including fire

prevention and health standards, to provide for the physical comfort, care, and well-being of the children served.

4. The ratio of staff to children required to provide adequate care and supervision of the children served and, in the case of foster homes, the maximum number of children in the home.

5. The good moral character based upon screening, education, training, and experience requirements for personnel.

6. The department may grant exemptions from disqualification from working with children or the developmentally disabled as provided in s. 435.07.

7. The provision of preservice and inservice training for all foster parents and agency staff.

8. Satisfactory evidence of financial ability to provide care for the children in compliance with licensing requirements.

9. The maintenance by the agency of records pertaining to admission, progress, health, and discharge of children served, including written case plans and reports to the department.

10. The provision for parental involvement to encourage preservation and strengthening of a child's relationship with the family.

11. The transportation safety of children served.

12. The provisions for safeguarding the cultural, religious, and ethnic values of a child.

13. Provisions to safeguard the legal rights of children served.

(b) In promulgating licensing rules pursuant to this section, the department may make distinctions among types of care; numbers of children served; and the physical, mental, emotional, and educational needs of the children to be served by a home or agency.

(c) The department shall not adopt rules which interfere with the free exercise of religion or which regulate religious instruction or teachings in any child-caring or child-placing home or agency; however, nothing herein shall be construed to allow religious instruction or teachings that are inconsistent with the health, safety, or well-being of any child; with public morality; or with the religious freedom of children, parents, or legal guardians who place their children in such homes or agencies.

(6)(a) An application for a license shall be made on forms provided, and in the manner prescribed, by the department. The department shall make a determination as to the good moral character of the applicant based upon screening.

(b) Upon application, the department shall conduct a licensing study based on its licensing rules; shall inspect the home or the agency and the records, including financial records, of the agency; and shall interview the applicant. The department may authorize a licensed child-placing agency to conduct the licensing study of a family foster home to be used exclusively by that agency and to verify to the department that the home meets the licensing requirements established by the department. Upon certification by a licensed child-placing agency that a family foster home meets the licensing requirements, the department shall issue the license.

(c) A licensed family foster home, child-placing agency, or residential child-caring agency which applies for renewal of its license shall submit to the department a list of personnel who have worked on a continuous basis at the applicant family foster home or agency since submitting fingerprints to the department, identifying those for whom a written assurance of compliance was provided by the department and identifying those personnel who have recently begun working at the family foster home or agency and are awaiting the results of the required fingerprint check, along with the date of

the submission of those fingerprints for processing. The department shall by rule determine the frequency of requests to the Department of Law Enforcement to run state criminal records checks for such personnel except for those personnel awaiting the results of initial fingerprint checks for employment at the applicant family foster home or agency.

(d) 1. The department may pursue other remedies provided in this section in addition to denial or revocation of a license for failure to comply with the screening requirements. The disciplinary actions determination to be made by the department and the procedure for hearing for applicants and licensees shall be in accordance with chapter 120.

2. When the department has reasonable cause to believe that grounds for denial or termination of employment exist, it shall notify, in writing, the applicant, licensee, or summer or recreation camp, and the personnel affected, stating the specific record which indicates noncompliance with the screening requirements.

3. Procedures established for hearing under chapter 120 shall be available to the applicant, licensee, summer day camp, or summer 24-hour camp, and affected personnel, in order to present evidence relating either to the accuracy of the basis for exclusion or to the denial of an exemption from disqualification.

4. Refusal on the part of an applicant to dismiss personnel who have been found not to be in compliance with the requirements for good moral character of personnel shall result in automatic denial or revocation of license in addition to any other remedies provided in this section which may be pursued by the department.

(e) At the request of the department, the local county health department shall inspect a home or agency according to the licensing rules promulgated by the department. Inspection reports shall be furnished to the department within 30 days of the request. Such an inspection shall only be required when called for by the licensing agency.

(f) All residential child-caring agencies must meet firesafety standards for such agencies adopted by the Division of State Fire Marshal of the Department of Financial Services and must be inspected annually. At the request of the department, firesafety inspections shall be conducted by the Division of State Fire Marshal or a local fire department official who has been certified by the division as having completed the training requirements for persons inspecting such agencies. Inspection reports shall be furnished to the department within 30 days of a request.

(g) In the licensing process, the licensing staff of the department shall provide consultation on request.

(h) Upon determination that the applicant meets the state minimum licensing requirements, the department shall issue a license without charge to a specific person or agency at a specific location. A license may be issued if all the screening materials have been timely submitted; however, a license may not be issued or renewed if any person at the home or agency has failed the required screening. The license is nontransferable. A copy of the license shall be displayed in a conspicuous place. Except as provided in paragraph (j), the license is valid for 1 year from the date of issuance, unless the license is suspended or revoked by the department or is voluntarily surrendered by the licensee. The license is the property of the department.

(i) A license issued for the operation of a family foster home or agency, unless sooner suspended, revoked, or voluntarily returned, will expire automatically 1 year from the date of issuance except as provided in paragraph (j). Ninety days prior to the expiration date, an application for renewal shall be submitted to the department by a licensee who wishes to have the license renewed. A license shall be renewed upon the filing of an application on forms furnished by the department if the applicant has first met the requirements established under this section and the rules promulgated hereunder.

(j) Except for a family foster group home having a licensed capacity for more than five children, the department may issue a license that is valid for longer than 1 year but no longer than 3 years to a

family foster home that:

1. Has maintained a license with the department as a family foster home for at least the 3 previous consecutive years;
2. Remains in good standing with the department; and
3. Has not been the subject of a report of child abuse or neglect with any findings of maltreatment.

A family foster home that has been issued a license valid for longer than 1 year must be monitored and visited as frequently as one that has been issued a 1-year license. The department reserves the right to reduce a licensure period to 1 year at any time.

(k) The department may not license summer day camps or summer 24-hour camps. However, the department shall have access to the personnel records of such facilities to ensure compliance with the screening requirements.

(7)(a) The department may issue a provisional license to an applicant who is unable to conform to the licensing requirements at the time of the study, but who is believed able to meet the licensing requirements within the time allowed by the provisional license. The issuance of a provisional license shall be contingent upon the submission to the department of an acceptable written plan to overcome the deficiency by the expiration date of the provisional license.

(b) A provisional license may be issued when the applicant fails to meet licensing requirements in matters that are not of immediate danger to the children and the agency has submitted a corrective action plan which is approved by the department. A provisional license may be issued if the screening material has been timely submitted; however, a provisional license may not be issued unless the applicant is in compliance with the requirements in this section for screening of personnel.

(c) A provisional license shall not be issued for a period in excess of 1 year and shall not be subject to renewal; and it may be suspended if periodic inspection by the department indicates that insufficient progress has been made toward compliance with the requirements.

(8)(a) Authorized licensing staff of the department who are qualified by training may make scheduled or unannounced inspections of a licensed home or agency at any reasonable time to investigate and evaluate the compliance of the home or agency with the licensing requirements. All licensed homes and agencies shall be inspected at least annually.

(b) The department shall investigate complaints to determine whether a home or agency is meeting the licensure requirements. The department shall advise the home or agency of the complaint and shall provide a written report of the results of the investigation to the licensee.

(9)(a) The department may deny, suspend, or revoke a license.

(b) Any of the following actions by a home or agency or its personnel is a ground for denial, suspension, or revocation of a license:

1. An intentional or negligent act materially affecting the health or safety of children in the home or agency.
2. A violation of the provisions of this section or of licensing rules promulgated pursuant to this section.
3. Noncompliance with the requirements for good moral character as specified in paragraph (5)(a).
4. Failure to dismiss personnel found in noncompliance with requirements for good moral character.

(10)(a) The department may institute injunctive proceedings in a court of competent jurisdiction to:

1. Enforce the provisions of this section or any license requirement, rule, or order issued or entered into pursuant thereto; or
2. Terminate the operation of an agency in which any of the following conditions exist:
 - a. The licensee has failed to take preventive or corrective measures in accordance with any order of the department to maintain conformity with licensing requirements.
 - b. There is a violation of any of the provisions of this section, or of any licensing requirement promulgated pursuant to this section, which violation threatens harm to any child or which constitutes an emergency requiring immediate action.
3. Terminate the operation of a summer day camp or summer 24-hour camp providing care for children when such camp has willfully and knowingly refused to comply with the screening requirements for personnel or has refused to terminate the employment of personnel found to be in noncompliance with the requirements for good moral character as determined in paragraph (5)(a).

(b) If the department finds, within 30 days after written notification by registered mail of the requirement for licensure, that a person or agency continues to care for or to place children without a license or, within 30 days after written notification by registered mail of the requirement for screening of personnel and compliance with paragraph (5)(a) for the hiring and continued employment of personnel, that a summer day camp or summer 24-hour camp continues to provide care for children without complying, the department shall notify the appropriate state attorney of the violation of law and, if necessary, shall institute a civil suit to enjoin the person or agency from continuing the placement or care of children or to enjoin the summer day camp or summer 24-hour camp from continuing the care of children.

(c) Such injunctive relief may be temporary or permanent.

(11)(a) The department is authorized to seek compliance with the licensing requirements of this section to the fullest extent possible by reliance on administrative sanctions and civil actions.

(b) If the department determines that a person or agency is caring for a child or is placing a child without a valid license issued by the department or has made a willful or intentional misstatement on any license application or other document required to be filed in connection with an application for a license, the department, as an alternative to or in conjunction with an administrative action against such person or agency, shall make a reasonable attempt to discuss each violation with, and recommend corrective action to, the person or the administrator of the agency, prior to written notification thereof. The department, instead of fixing a period within which the person or agency must enter into compliance with the licensing requirements, may request a plan of corrective action from the person or agency that demonstrates a good faith effort to remedy each violation by a specific date, subject to the approval of the department.

(c) Any action taken to correct a violation shall be documented in writing by the person or administrator of the agency and verified through followup visits by licensing personnel of the department.

(d) If the person or agency has failed to remedy each violation by the specific date agreed upon with the department, the department shall within 30 days notify the person or agency by certified mail of its intention to refer the violation or violations to the office of the state attorney.

(e) If the person or agency fails to come into compliance with the licensing requirements within 30 days of written notification, it is the intent of the Legislature that the department within 30 days refer the violation or violations to the office of the state attorney.

(12)(a) It is unlawful for any person or agency to:

1. Provide continuing full-time care for or to receive or place a child apart from her or his parents in a residential group care facility, family foster home, or adoptive home without a valid license issued by the department if such license is required by subsection (5); or
2. Make a willful or intentional misstatement on any license application or other document required to be filed in connection with an application for a license.

(b) It is unlawful for any person, agency, summer day camp, or summer 24-hour camp providing care for children to:

1. Willfully or intentionally fail to comply with the requirements for the screening of personnel or the dismissal of personnel found not to be in compliance with the requirements for good moral character as specified in paragraph (5)(a).
2. Use information from the criminal records obtained under this section for any purpose other than screening a person for employment as specified in this section or to release such information to any other person for any purpose other than screening for employment as specified in this section.

(c) It is unlawful for any person, agency, summer day camp, or summer 24-hour camp providing care for children to use information from the juvenile records of any person obtained under this section for any purpose other than screening for employment as specified in this section or to release information from such records to any other person for any purpose other than screening for employment as specified in this section.

(d) 1. A first violation of paragraph (a) or paragraph (b) is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

2. A second or subsequent violation of paragraph (a) or paragraph (b) is a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

3. A violation of paragraph (c) is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(13) If the department finds that any violation of this section or the rules promulgated pursuant to this section places the children served by the person or agency in immediate danger, the department may take the resident children into custody and place them in the care of another family foster home or residential child-caring agency.

(14)(a) In order to provide improved services to children, the department shall provide or cause to be provided preservice training for prospective foster parents and emergency shelter parents and inservice training for foster parents and emergency shelter parents who are licensed and supervised by the department.

(b) As a condition of licensure, foster parents and emergency shelter parents shall successfully complete a minimum of 21 hours of preservice training. The preservice training shall be uniform statewide and shall include, but not be limited to, such areas as:

1. Orientation regarding agency purpose, objectives, resources, policies, and services;
2. Role of the foster parent and the emergency shelter parent as a treatment team member;
3. Transition of a child into and out of foster care and emergency shelter care, including issues of separation, loss, and attachment;
4. Management of difficult child behavior that can be intensified by placement, by prior abuse or neglect, and by prior placement disruptions;
5. Prevention of placement disruptions;

6. **Care of children at various developmental levels, including appropriate discipline; and**
7. **Effects of foster parenting on the family of the foster parent and the emergency shelter parent.**

(c) In consultation with foster parents, each district or lead agency shall develop a plan for making the completion of the required training as convenient as possible for potential foster parents and emergency-shelter parents. The plan should include, without limitation, such strategies as providing training in nontraditional locations and at nontraditional times. The plan must be revised at least annually and must be included in the information provided to each person applying to become a foster parent or emergency-shelter parent.

(d) **Prior to licensure renewal, each foster parent and emergency shelter parent shall successfully complete 8 hours of inservice training.** Periodic time-limited training courses shall be made available for selective use by foster parents and emergency shelter parents. Such inservice training shall include subjects affecting the daily living experiences of foster parenting as a foster parent or as an emergency shelter parent, whichever is appropriate. For a foster parent or emergency shelter parent participating in the required inservice training, the department shall reimburse such parent for travel expenditures and, if both parents in a home are attending training or if the absence of the parent would leave the children without departmentally approved adult supervision, either the department shall make provision for child care or shall reimburse the foster or emergency shelter parents for child care purchased by the parents for children in their care.

(15)(a) The Division of Risk Management of the Department of Financial Services shall provide coverage through the Department of Children and Family Services to any person who owns or operates a family foster home solely for the Department of Children and Family Services and who is licensed to provide family foster home care in her or his place of residence. The coverage shall be provided from the general liability account of the State Risk Management Trust Fund, and the coverage shall be primary. The coverage is limited to general liability claims arising from the provision of family foster home care pursuant to an agreement with the department and pursuant to guidelines established through policy, rule, or statute. Coverage shall be limited as provided in ss. 284.38 and 284.385, and the exclusions set forth therein, together with other exclusions as may be set forth in the certificate of coverage issued by the trust fund, shall apply. A person covered under the general liability account pursuant to this subsection shall immediately notify the Division of Risk Management of the Department of Financial Services of any potential or actual claim.

(b) This subsection may not be construed as designating or not designating that a person who owns or operates a family foster home as described in this subsection or any other person is an employee or agent of the state. Nothing in this subsection amends, expands, or supersedes the provisions of s. 768.28.

(16)(a) The following information held by the Department of Children and Family Services regarding a foster parent applicant and such applicant's spouse, minor child, and other adult household member is exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution, unless otherwise ordered by a court: the home, business, work, child care, or school addresses and telephone numbers; social security numbers; birth dates; medical records; the floor plan of the home; and photographs of such persons. If a foster parent applicant does not receive a foster parent license, the information made exempt pursuant to this paragraph shall become public 5 years after the date of application, except that social security numbers and medical records shall remain exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption applies to information made exempt by this paragraph before, on, or after the effective date of the exemption.

(b) The following information held by the Department of Children and Family Services regarding a licensed foster parent and the foster parent's spouse, minor child, and other adult household member is exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution, unless otherwise ordered by a court: the home, business, work, child care, or school addresses and telephone numbers; social security numbers; birth dates; medical records; the floor plan of the

home; and photographs of such persons. If a foster parent's license is no longer active, the information made exempt pursuant to this paragraph shall become public 5 years after the expiration date of such foster parent's foster care license, except that social security numbers and medical records shall remain exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution. However, exempt information regarding a licensed foster parent who has become an adoptive parent and exempt information regarding such foster parent's spouse, minor child, or other adult household member shall not become available to the public 5 years after expiration of such foster parent's license and shall remain exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption applies to information made exempt by this paragraph before, on, or after the effective date of the exemption.

(c) The name, address, and telephone number of persons providing character or neighbor references regarding foster parent applicants or licensed foster parents held by the Department of Children and Family Services are exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

CREDIT(S)

Laws 1969, c. 69-106, §§ 19, 35; Laws 1969, c. 69-268, § 1; Laws 1970, c. 70-255, § 1; Laws 1977, c. 77-147, § 276; Laws 1978, c. 78-433, § 7; Laws 1980, c. 80-102, § 5; Laws 1984, c. 84-311, § 1; Laws 1985, c. 85-54, § 35; Laws 1987, c. 87-238, § 28; Laws 1987, c. 87-535, § 1; Laws 1988, c. 88-337, § 41; Laws 1990, c. 90-225, § 2; Laws 1990, c. 90-306, § 42; Laws 1991, c. 91-33, § 11; Laws 1991, c. 91-57, § 29; Laws 1991, c. 91-71, § 2; Laws 1991, c. 91-220, § 56; Laws 1993, c. 93-39, § 29; Laws 1993, c. 93-156, § 15; Laws 1994, c. 94-134, § 23; Laws 1994, c. 94-135, § 23; Laws 1995, c. 95-152, § 19; Laws 1995, c. 95-158, § 16; Laws 1995, c. 95-228, § 42; Laws 1995, c. 95-418, § 132; Laws 1996, c. 96-268, § 13; Laws 1996, c. 96-402, § 6; Laws 1996, c. 96-406, §§ 251, 252; Laws 1997, c. 97-101, § 194; Laws 1997, c. 97-103, § 1018. Amended by Laws 1998, c. 98-29, § 1, eff. April 29, 1998; Laws 2000, c. 2000-122, § 23, eff. April 20, 2000; Laws 2000, c. 2000-217, § 11, eff. June 5, 2000; Laws 2000, c. 2000-265, § 5, eff. Oct. 1, 2000; Laws 2000, c. 2000-349, §§ 97, 155, eff. Sept. 1, 2000; Laws 2001, c. 2001-68, § 8, eff. July 1, 2001; Laws 2002, c. 2002-219, § 6, eff. July 1, 2002; Laws 2003, c. 2003-83, § 1, eff. June 2, 2003; Laws 2003, c. 2003-146, § 9, eff. July 1, 2003; Laws 2003, c. 2003-261, § 442, eff. June 26, 2003; Laws 2004, c. 2004-267, § 19, eff. July 1, 2004; Laws 2006, c. 2006-194, § 12, eff. July 1, 2006.

REPEAL

<Subsecs. (16)(a) and (16)(b) are repealed by Laws 2003, c. 2003-83, § 2, on October 2, 2008, unless reviewed and saved from repeal by the Legislature. >

HISTORICAL AND STATUTORY NOTES

Prior Provisions for Legislative Review of Regulatory Statutes:

Laws 1976, c. 76-168, § 3, the Regulatory Reform Act of 1976, provided for the repeal of sections 409.145, 409.165 and 409.175 on July 1, 1982. Laws 1981, c. 81-318, repealed all prior laws providing for regulatory review pursuant to the Regulatory Reform Act of 1976 and in turn provided for the repeal of sections 409.145, 409.165, and 409.175 on October 1, 1983. Laws 1983, c. 83-250, § 3, provided that sections 409.145, 409.165, and 409.175 shall not stand repealed on October 1, 1983, and shall continue in full force and effect as amended herein. Laws 1983, c. 83-250, § 3, provided that §§ 409.145, 409.165 and 409.175 shall not stand repealed on October 1, 1983, and shall continue in full force in effect as amended therein and enacted provisions for the repeal of § 409.175 effective October 1, 1984. Laws 1984, c. 84-311, § 20, provided that notwithstanding provisions of the Regulatory Sunset Act or other provisions of law, § 409.175 would not stand repealed on October 1, 1984, but continue in full force in effect as amended by the 1984 law. Section 21 of Laws 1984, c. 84-311 enacted provisions discussed in the italicized note following this section.

Laws 1984, c. 84-311, § 21, provided for the repeal of §§ 409.175 and 409.176 on October 1, 1994, and review by the legislature pursuant to § 11.61, the Regulatory Sunset Act.

Laws 1991, c. 91-429, provided that, notwithstanding the Regulatory Sunset Act or any other provision of law enacted before Jan. 14, 1992, which scheduled §§ 409.175 and 409.176 for expiration or repeal, these sections would not expire or stand repealed as scheduled by such laws, but were revived and readopted.

Sections 11.61 and 11.611, the sunset and sundown review provisions, were repealed effective on the day following the day of adjournment sine die of the 1993 regular session of the legislature by Laws 1991, c. 91-429.

Amendment Notes:

Section 2 of Laws 1984, c. 84-311, provides:

"No later than July 1, 1985, the Department of Health and Rehabilitative Services shall promulgate licensing rules to carry out the implementation of s. 409.175, Florida Statutes, as amended by this act. Any family foster home, child-caring agency, or child-placing agency offering such care to children and currently licensed by the department may be given a reasonable time, not to exceed 6 months from the date of publication of any applicable rules adopted pursuant to s. 409.175, Florida Statutes, as amended by this act, within which to comply with the licensing rules to obtain a license."

Laws 1994, c. 94-134, § 36, and Laws 1994, c. 94-135, § 36, provide:

"This act shall take effect July 1, 1994, and shall apply to offenses committed on or after that date."

Laws 2000, c. 2000-265, § 6, and Laws 2000, c. 2000-349, § 156, each provide in identical language that:

"Nothing in this act excuses or relieves the department of any other obligations to abused, neglected or abandoned children in its custody."

The introductory language to § 1 of Laws 2003, c. 2003-83, provides:

"Notwithstanding the October 2, 2003, repeal of said subsection scheduled pursuant to the Open Government Sunset Review Act of 1995, subsection (16) of section 409.175, Florida Statutes, is amended to read."

Laws 2003, c. 2003-83, §§ 2 and 3, provide:

"Section 2. Paragraphs (a) and (b) of subsection (16) of s. 409.175, Florida Statutes, are subject to the Open Government Sunset Review Act of 1995 in accordance with s. 119.15, Florida Statutes, and shall stand repealed on October 2, 2008, unless reviewed and saved from repeal through reenactment by the Legislature.

"Section 3. The Legislature finds that it is a public necessity that the public records exemption found in s. 409.175(16), Florida Statutes, be expanded to include medical records and certain information regarding foster parent applicants, as well as information regarding a foster parent applicant's spouse, child, and other adult household members, in order to protect information of a sensitive personal nature. Public access to such records could cause harm or embarrassment to an individual and constitutes an unwarranted invasion into an individual's life and personal privacy. The harm from disclosing medical records outweighs any public benefit that can be derived from public access to such records. The Legislature also finds that the public records exemption for medical records is a public necessity because matters of personal health are traditionally private and confidential concerns between a patient and a health care provider. The private and confidential nature of personal health matters pervades both the public and private health care sectors. Furthermore, the public availability of medical records could lessen the willingness of prospective caregivers to reveal medical information, thus hindering the department's ability to assess foster parent applicants and licensed foster parents and hindering the department's attempts to make appropriate placements for foster

children. The Legislature further finds that it is a public necessity to provide foster parent applicants with the same public records exemption afforded licensed foster parents under s. 409.175(16), Florida Statutes, in order to encourage persons to apply to become licensed foster parents. The public availability of such information regarding foster parent applicants could have a negative, chilling effect on the recruitment of such persons. Accordingly, the public records exemption for such applicant information and for medical records is a public necessity for the effective and efficient operation of the foster care program."

CROSS REFERENCES

Adoption of children, generally, see § 63.012 et seq.

Child care facilities, submission of fingerprints, see § 402.3055.

Consent to medical care or treatment of a minor, see § 743.0645.

LAW REVIEW AND JOURNAL COMMENTARIES

Florida's inconsistent use of the best interests of the child standard. Laura A. Turbe, 33 Stetson L.Rev. 369 (Fall 2003).

Opening another exit from child welfare for special needs children--Why some gay men and lesbians should have the privilege to adopt children in Florida. Cynthia R. Mabry, 18 St. Thomas L. Rev. 269 (2005).

Regulatory reform in the child care industry. Nancy A. Lauten, 13 Fla.St.U.L.Rev. 633 (1985).

LIBRARY REFERENCES

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Asylums ¶1.

Licenses ¶11(1).

Westlaw Topic Nos. 238, 43.

C.J.S. Architects § 2.

C.J.S. Asylums and Institutional Care Facilities §§ 2 to 3.

C.J.S. Licenses §§ 30 to 34.

RESEARCH REFERENCES

ALR Library

39 ALR 5th 103, Propriety of Exclusion of Press or Other Media Representatives from Civil Trial.

165 ALR 1302, Constitutionality, Construction, and Effect of Statute or Regulation Relating Specifically to Divulgance of Information Acquired by Public Officers or Employees.

Encyclopedias

Rights as Between Parent and Third Person; Parental Preference Rule--Particular Applications of Rule, FL Jur. 2d Family Law § 96.

Rights as to Illegitimate Child; as Between Parents--As Between Parents and Third Persons, FL Jur. 2d Family Law § 98.

Generally; Procedures and Jurisdiction, FL Jur. 2d Family Law § 281.

Care and Control of Person--Minors, FL Jur. 2d Guardian & Ward § 85.

Exceptions, FL Jur. 2d Welfare § 97.

Requirements for Licensing, FL Jur. 2d Welfare § 98.

Procedure Upon Initial Application or Renewal, FL Jur. 2d Welfare § 99.

Issuance and Duration of License, FL Jur. 2d Welfare § 100.

Denial, Suspension, or Revocation of License, FL Jur. 2d Welfare § 101.

Issuance of Provisional Licenses, FL Jur. 2d Welfare § 102.

Inspections, FL Jur. 2d Welfare § 103.

Denial, Revocation, or Suspension of Registration, FL Jur. 2d Welfare § 105.

Injunctive Relief, FL Jur. 2d Welfare § 106.

Administrative Sanctions; Criminal Penalties, FL Jur. 2d Welfare § 107.

State Programs, FL Jur. 2d Welfare § 113.

Treatises and Practice Aids

16 Florida Practice Series § 10.12, Expunction.

16 Florida Practice Series § 10.13, Sealing of Criminal Records.

UNITED STATES CODE ANNOTATED

Child welfare, foster care, home studies, incentive payments, see 42 U.S.C.A. § 673c.

Child welfare, foster care maintenance, see 42 U.S.C.A. § 672.

Child welfare, state plan, foster care and adoption assistance, see 42 U.S.C.A. § 671.

NOTES OF DECISIONS

Bonuses 6

Findings, licensure 2

Hearings 7

Liability of foster parents 5

Licensure 1, 2

 Licensure - In general 1

 Licensure - Findings 2

Local regulation 4

Revocation of license 3

Termination of parental rights 8

1. Licensure

Department of public welfare had authority to require person or corporation who has children in his or its care in a child-caring institution to obtain a license from department of public welfare, notwithstanding children are not "dependent" in sense that they have aid from public funds or that child-caring institution declares itself to be "academy" or "school". State Dept. of Public Welfare v. Galilean Children's Home, App. 2 Dist., 102 So.2d 388 (1958). Infants 6, 17

If a day nursery were operated for the care of dependent children away from their homes, it was subject to the license provisions of former provisions of this chapter, and if the day nursery were operated for children who were not dependent children, the institution was not subject to license under former provision, but was subject to the license under Laws 1941, c. 21013, counties of more

than 267,000 population. Op.Atty.Gen., 1947-48, p. 438.

2. ---- Findings, licensure

Administrative Law Judge was required to make specific findings based on the evidence indicating how foster parents violated statutes or rules through the use of a safety harness on a foster child or how the conduct justified denial of application of a foster home license in another city; statutes and rules relied on by the court addressed the licensure of family foster homes and substitute care of children, none of which specifically prohibited the use of a safety harness on a child. Mayes v. Department of Children and Family Services, App. 1 Dist., 801 So.2d 980 (2001). Infants 17

Administrative Law Judge was required to make specific findings based on the evidence indicating how foster parents violated statutes or rules through the use of a hook-type latch on the door to a foster child's bedroom or how the conduct justified denial of application of a foster home license in another city; statutes and rules relied on by the court addressed the licensure of family foster homes and substitute care of children, none of which specifically prohibited the use of a latch on a child's door for non-disciplinary purposes. Mayes v. Department of Children and Family Services, App. 1 Dist., 801 So.2d 980 (2001). Infants 17

3. Revocation of license

Where former provision of this chapter authorizing state board of department of public welfare to license child-caring institutions provided that if order of revocation was not complied with, state board shall apply to court of equity having jurisdiction over institution, and such court of equity shall hear and determine case, later constitutional amendment and legislation regarding juvenile courts did not impliedly repeal first statute, and circuit court had jurisdiction of action by department of public health to enjoin and restrain corporations from operating child-caring institutions. State Dept. of Public Welfare v. Galilean Children's Home, App. 2 Dist., 102 So.2d 388 (1958). Injunction 110; Asylums And Assisted Living Facilities 31

4. Local regulation

The board of commissioners of Dade County could not pass an ordinance regulating and licensing child care facilities pursuant to their home rule amendment which would supercede or repeal specific sections of antecedent to this chapter, or Laws 1941, c. 21013, which placed the jurisdiction of those facilities under the Florida state department of public welfare. Op.Atty.Gen., 062-21, Jan. 29, 1962.

5. Liability of foster parents

In the absence of any rule or regulation or contractual obligation to the contrary, foster parents do not incur any personal liability for injuries to a child placed in their home by the department of public welfare except for injuries caused by their own negligence or other wrongful act. Op.Atty.Gen., 060-163, Oct. 10, 1960.

6. Bonuses

Department of Health and Rehabilitative Services does not have authority to pay bonuses to foster parents who recruit additional foster parents. Op.Atty.Gen., 88-43, Sept. 27, 1988.

7. Hearings

Statute requiring closure of adoption proceedings, did not apply to administrative hearing on license application of child placement/adoption agency. Department of Health and Rehabilitative Services v. Tallahassee Democrat, Inc., App. 1 Dist., 481 So.2d 958 (1986). Infants 17

8. Termination of parental rights

In proceeding to terminate parental rights to four minor children, Department of Children and

Families was not required to disclose to mother and father the identity or addresses of children's foster parents; focus of proceeding was on parents rather than on foster parents, and statute excluding foster care information from public records disclosure shielded foster parents from termination case. A.A. v. Department of Children and Families, App. 4 Dist., 852 So.2d 318 (2003), rehearing denied. Infants 201

West's F. S. A. § 409.175, FL ST § 409.175

Current with chapters in effect from the 2008 Second Regular Session of the Twentieth Legislature through March 14, 2008.

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